

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

K. William Scott, Esquire  
Scott and Shuman, LLC  
38017 Fenwick Shoals Boulevard  
West Fenwick, DE 19975

John A. Sergovic, Jr., Esquire  
Leslie Case DiPietro, Esquire  
Sergovic & Carmean, P.A.  
123 West Market Street  
Georgetown, De 19947

RE: ***Bruggeman v. Mandrin Homes, Ltd.***  
C.A. No. S10C-02-031 RFS

*Upon Defendant's Motion to Amend Counterclaim. Granted.*

Submitted: November 1, 2010  
Decided: November 10, 2010

Dear Counsel:

I have received your submissions regarding Defendant's Motion to Amend Counterclaim. The motion is granted.

The proposed amendment alleges that in addition to orally agreed-upon payments for Plaintiffs' consulting services regarding acquisition of the Homestead Properties and the Hinson properties, Plaintiffs received compensation which constituted commissions for real estate services. It further alleges that Plaintiffs were not licensed real estate brokers, as defined in 24 *Del. C.* § 2901(a)(4) & (a)(5). Therefore, Plaintiffs were not entitled to commission payments. *Eastern Commercial Realty Corp. v. Fusco*, 654 A.2d 833, 836 (Del. 1995).

Plaintiffs argue that the payments received were for percentages of resale prices based on a joint venture formed by the parties. Plaintiffs also assert that the Bruggeman realtor identified in the Complaint is a licensed Maryland real estate broker, although he acts as an independent consultant for Defendants. Plaintiffs describe the proposed

amendment as a compulsory counterclaim. Super. Ct. Civ. R. 13(a).

A motion to amend is addressed to the discretion of the trial court and will be freely given as justice requires. *E.I. DuPont De Nemours & Co. v. Allstate Ins. Co.*, 2008 WL 555919, at \*1 (Del. Super.). In the absence of substantial prejudice or legal insufficiency, the Court will grant a motion to amend. *Id.*

Defendant's proposed amendment was timely filed on September 14, 2010, pursuant to the Pretrial Scheduling Order. There are no statute of limitations problems. The amended counterclaim arises from the same transaction or occurrence that is the subject matter of the Complaint and adjudication does not require the presence of third parties over whom the Court has no jurisdiction. Trial is scheduled for September 19, 2011, and the amended counterclaim causes no substantial prejudice to Plaintiffs. Therefore, the proposed amended counterclaim is a compulsory counterclaim pursuant to Rule 13(a).

Defendants did not state this claim in the initial answer to the Complaint but did seek leave of the Court to make the amendment in the timely filing of the motion. *PNC Bank v. Turner*, 659 A.2d 222 (Del. Super. 1995).

Defendants' Motion to Amend Counterclaim is **GRANTED**.

**IT IS SO ORDERED.**

Very truly yours,

Richard F. Stokes